

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
RENO, NEVADA

)
**CHARLA CONN, administrator of the)
ESTATE OF BRENDA JEAN CLUSTKA,)
CHARLA CONN and DUSTIN CONN,)
)
Plaintiffs,) Case No.: 3:05-cv-00595-HDM
)
vs.)
) MINUTES OF COURT
RPD OFFICER RYAN ASHTON and)
RPD OFFICER DAVID ROBERTSON,)
) February 29, 2012
Defendants.)
/**

PROCEEDINGS: TELEPHONIC STATUS CONFERENCE

PRESENT:

THE HONORABLE HOWARD D. McKIBBEN, SENIOR U.S. DISTRICT JUDGE

Deputy Clerk: Paris Rich FTR Reporter: (8:59:30 to 9:36:54)

**Counsel for Plaintiffs: Terri Keyser-Cooper, Esq., Diane Vaillancourt, Esq.
and Peter Wetherall, Esq.**

Counsel for Defendants: Jack Campbell, Esq.

At 8:59 a.m., the Court convenes. Counsel are present telephonically as indicated.

The Court addresses [120] Defendants' Emergency Motion to Continue Trial and Plaintiffs' [121] Response. Mr. Campbell presents argument. Ms. Vaillancourt presents argument. **IT IS ORDERED, [120] Defendants' Emergency Motion is GRANTED IN PART. Jury Trial in this matter shall commence on Wednesday, March 7, 2012 at 8:30 a.m. IT IS SO ORDERED.**

The Court and counsel further confer regarding Trial scheduling.

The Court addresses [123] Defendants' Motion to Supplement Pretrial Order and [125] Objection thereto. Mr. Campbell presents argument. Ms. Vaillancourt presents argument. The Court recites statements. **IT IS ORDERED, the Court reserves on [123] Motion to Supplement. There shall be no opening statement by the Defendants regarding the supplemental documents, except if they are documents admissible on the basis of impeachment of a witness called by the Plaintiffs. IT IS SO ORDERED.**

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The Court recites statements and rulings regarding [107] Plaintiffs' Motion in Limine.

IT IS ORDERED, the Court RESERVES on [107] Motion (1)(a), (1)(b), (1)(e), (1)(f), (1)(h), (1)(I), (1)(j) and (1)(k) as to issues of the medical history of Brenda Jean Clustka and her visits to institutions.

IT IS ORDERED, the Court GRANTS [107] Motion (3)(a) and (3)(b). The case caption shall be amended as follows: CHARLA CONN, administrator of the ESTATE OF BRENDA JEAN CLUSTKA, CHARLA CONN and DUSTIN CONN, Plaintiffs, vs. RPD OFFICER RYAN ASHTON and RPD OFFICER DAVID ROBERTSON, Defendants. IT IS FURTHER ORDERED, no mention shall be made to the jury that this case formerly contained Defendant City of Reno.

Based upon no objection by the Defendants, **IT IS ORDERED, the Court GRANTS [107] Motion (1)(c) and (1)(d) regarding Ms. Clustka's other hospitalizations and Ms. Clustka's REMSA records.**

IT IS FURTHER ORDERED, the Court GRANTS [107] Motion (1)(g) Clustka's jail photographs and mugshots. Further, there will be no reference by Defendants in the opening statement on this issue.

IT IS FURTHER ORDERED, the Court DENIES [107] Motion (2)(e). As long as the Defendants are on duty, Defendants shall be allowed to wear uniforms in the courtroom.

The Court addresses [107] Motion (2)(a) and references to Defendants financial condition. **IT IS ORDERED, the Court bifurcates the issue of punitive damages. Otherwise, the Court sees no relevance and [107] Motion (2)(a) is DENIED.**

The Court addresses [107] Motion (2)(b) and references to the "courage" of police officers, **IT IS ORDERED, [107] Motion (2)(b) is DENIED, subject to appropriate objections at Trial.**

The Court addresses [107] Motion (2)(c) regarding references to Defendants' careers including how an adverse verdict would harm them. **IT IS ORDERED, the Court RESERVES on [107] Motion (2)(c) and will access the evidence as presented.**

The Court addresses [107] Motion (2)(d) and Defendants' performances more recently. The Court states it is unsure as to relevance. Mr. Campbell presents statements. **IT IS ORDERED, the Court RESERVES on [107] Motion (2)(d) and will access the evidence as presented.**

IT IS ORDERED, the Court RESERVES on [107] Motion (4)(a), (4)(b) and (4)(c).

The Court addresses [107] Motion (5)(a). The Court and counsel confer. **IT IS ORDERED, [107] Motion (5)(a) is DENIED.**

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The Court addresses [107] Motion (5)(b). The Court and counsel confer. **IT IS ORDERED, [107] Motion (5)(b) is DENIED.**

The Court addresses [107] Motion (6)(a), (6)(b) and (6)(c). **IT IS ORDERED, [107] Motion (6)(a) and (6)(b) are GRANTED. IT IS FURTHER ORDERED, neither party shall engage in inflammatory statements during opening and no statements of personal belief or opinions shall be allowed during opening. IT IS FURTHER ORDERED, [107] Motion (6)(c) is DENIED, subject to appropriate objections at Trial.**

IT IS ORDERED, the Court RESERVES on [107] Motion (7)(a) (7)(b).

IT IS FURTHER ORDERED, the Court RESERVES on issues regarding to what extent testimony will be allowed regarding prior incidents, i.e., prior arrests of Ms. Clustka, calls by Ms. Clustka's mother, protective custody, battering, and altercations.

The Court inquires as to the current ages of the Plaintiffs. Ms. Keyser-Cooper confirms the Plaintiffs are 25 and 27 years old. The Court and counsel further confer regarding the chronology of events in this matter.

Mr. Campbell confirms, as of this date, he will not be filing any Proposed Jury Instructions. Ms. Vaillancourt recites statements into the record as to the Defendants non-filing of any instructions on causation or damages. The Court and counsel confer.

IT IS ORDERED, counsel shall be present in the Reno Courtroom 4 on Wednesday, March 5, 2012 at 8:00 a.m to addresses any required issues. Thereafter, the Court will call for the jury at 8:30 a.m. IT IS SO ORDERED.

The Courtroom Clerk will contact counsel regarding the pre-testing of the evidence display technology.

The Court inquires as to stipulated exhibits in this matter. Ms. Vaillancourt confirms Exhibits 11 and 12 are stipulated to at this time. The Court and counsel further confer.

At 9:37 a.m., the Court adjourns and the Courtroom Clerk remains to discuss the parties' exhibits.

LANCE S. WILSON, CLERK

By: /s/ Paris Rich
Deputy Clerk